



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 20, 2023

IN THE MATTER OF:

Appeal Board No. 629193

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 629191 and 629192, the claimant appeals from the decisions of the Administrative Law Judge filed May 5, 2023, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 10, 2020 through July 15, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$9,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; an overpayment of \$3,230.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the CARES Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board No. 629193, the claimant appeals from the decisions of the Administrative Law Judge filed May 5, 2023, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective March 10, 2020 through July 15, 2020, on the basis that the claimant did not comply with reporting requirements.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant traveled from the United States to the Dominican Republic on March 15, 2020, and remained there until he flew back to the U.S. on July 15, 2020. The reason for his trip was personal, and at least partially related to his health.

The claimant filed a claim for unemployment benefits on April 26, 2020; his claim was made effective March 9, 2020. After filing his claim, the claimant read the claimant information handbook, and began to certify weekly for unemployment benefits. Of relevance here, on June 7, 2020, the claimant certified by phone for the week ending June 7, 2020, indicating that there were no days he was not ready, willing and able to work. On June 8, 2020, the claimant certified for the weeks ending March 15, 2020 through May 17, 2020 (10 weeks), stating that in each of these weeks he was eligible to receive benefits, indicating that there were no days he was not ready, willing, and able to work. The claimant certified for benefits by phone for the week ending June 14; and using the Internet for the weeks ending June 21 and 28. Two attempts were made on July 5, 2020 to certify from an IP address in the Dominican Republic. The claimant then certified by voice for the weeks ending July 5 and 12, 2020.

As a result of his certifications that he was ready, willing, and able to work during the period beginning March 10, 2020 through July 15, 2020, the claimant received FPUC benefits totaling \$9,000 and PUA benefits totaling \$3,230.50.

After the attempted certification from a foreign IP address on July 5, 2020, the Department of Labor sent the claimant an "Out of Country" questionnaire which the claimant completed on or about July 17, 2020. The claimant indicated in response to questions on this form that he had traveled outside the United States to the Dominican Republic, and that he left home on March 10, 2020 and returned on July 15, 2020. He indicated that the purpose of the trip was because he was "sick and have surgery in my back (column) and stay long time," and that while he was there he was the victim of a crime and his leg was injured, requiring additional surgery and additional time in the Dominican Republic; and that his stay was again extended due to the corona virus.

Passport pages produced by the claimant reflect stamps indicating his arrival in the Dominican Republic on March 10, 2020, and departure on July 15, 2020; there are no stamps dated either March 15, 2020 or July 12, 2020. Documents purporting to be the claimant's bank records reflect debit card purchases in the Dominican Republic on June 30, July 2, July 10, July 13, July 14, and July

15, 2020. These records also reflect the purchase of a JetBlue ticket on July 12, 2020, and a MetroCard purchase in New York on July 15, 2020. Documents produced by the claimant to establish that he returned to the United States from the Dominican Republic on March 15, 2020 refer to the flight occurring on "Friday March 15;" March 15, 2020 was a Monday.

OPINION: The credible evidence establishes that the claimant traveled by plane to the Dominican Republic on March 10, 2020 and remained there until July 15, 2020, when he flew back to the United States.

We are not convinced by the claimant's testimony that he did not stay in the Dominican Republic the entire period at issue, but that he made two short trips, one from March 10 to March 15, and one from July 12 to July 15, and was in the United States the remainder of the time. We find it significant that on the questionnaire completed by the claimant on or about July 17, 2020, he stated unequivocally that he left home to travel to the Dominican Republic on March 15, 2020 and that he returned home on July 15, 2020. The claimant also stated that the purpose of the trip was because he was sick, had back and leg surgery, and that

his return was then delayed by the onset of the corona virus. We find these statements made and

acknowledged by the claimant-prior to the ineligibility determinations at issue-are more credible than his

subsequent testimony to the contrary. Further, the claimant's passport pages reflect stamps on March 10, 2020 and July 15, 2020, the dates the claimant initially reported that he left and returned to the United States, but bear no indication that he left the Dominican Republic on March 15, 2020 and returned on July 12, 2020.

In addition, the July 2020 bank records produced by the claimant reveal multiple debit transactions in the Dominican Republic on dates when the claimant contends he was in the United States. Curiously, the claimant has not produced bank records for March, April, May or June 2020, although he and his representative were aware that the entire period was at issue. We are not persuaded that these transactions were made by the claimant's mother. The claimant was vague and inconsistent, when he initially testified that his mother had access to his card, and then that he left his card with his mother,

and then that he gave his mother his card; we note that the claimant was unable to say when that exchange occurred.

Also not persuasive is the claimant's explanation that his mother was responsible for the attempted certification from the Dominican Republic on July 5, 2020, because she had "taken his phone by mistake" and the claimant gave her his PIN number and asked her to certify for him. Discounting the fact that the claimant's conduct of sharing his PIN number and other log-in information is itself problematic and violates unemployment insurance rules and regulations, we note that the claimant did not clarify when this mistaken phone switch occurred, and that his explanation is inconsistent with the fact that the claimant made certifications before and after July 5, both by phone and using the website, without his mother's assistance. Accordingly, we find that this July 5, 2020 certification attempt is further evidence that the claimant was in the Dominican Republic on July 5, 2020, contrary to his contention otherwise.

As noted by the hearing Judge, there are multiple discrepancies and irregularities in the boarding passes produced by the claimant. These include, but are not limited to, the fact that the ticket numbers on the boarding passes for the "July 12" and "July 15" flights are identical; and that the boarding, arrival and departure times are identical, though one purports to be a flight from the United States to the Dominican Republic, and one from the Dominican Republic to the United States. In addition, the two passes bear identical handwritten markings and smudges. However, even if we overlook these peculiarities that indicate the boarding passes were altered, the remaining credible evidence-including the claimant's own statementstill establishes that the claimant left the United States for the Dominican Republic on March 10, 2020 and did not return until July 15, 2020.

Since the claimant was in the Dominican Republic, which is not a signatory to the Interstate Benefits Payment Plan, and since he had traveled there on March 10, 2020 for personal reasons, the claimant was not able to report in person to a jurisdiction that is a member of that plan, and is ineligible for unemployment benefits on that basis for the period at issue.

In addition, since the claimant was in the Dominican Republic from March 10, 2020 through July 15, 2020, he was not ready, willing and able to work immediately in the United States. He was therefore not available to work for unemployment insurance purposes, and not eligible to receive benefits on that

basis as well. Since the claimant was not available and therefore not eligible for benefits, the benefits he received were overpaid. As a matter of law, these overpaid federal benefits are recoverable.

Finally, the evidence establishes that the claimant certified that he was ready, willing, and able to work during the period at issue, although he knew he was out of the country and therefore not available to work immediately. We conclude that his certifications were not only factually false, but were wilful misrepresentations.

DECISION: In Appeal Board Nos. 629191, 629192, and 629193, the decisions of the Administrative Law Judge, insofar as appealed from, are affirmed.

In Appeal Board Nos. 629191 and 629192, the initial determinations holding the claimant ineligible to receive benefits, effective March 10, 2020 through July 15, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of FPUC benefits of \$9,000 recoverable

pursuant to Section 2104 (f)(2) of the CARES Act of 2020; an overpayment of \$3,230.50 in PUA benefits recoverable pursuant to Section 2102 (h) of the CARES Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits on the basis that the claimant made wilful misrepresentations to obtain benefits, are sustained.

In Appeal Board No. 629193, the initial determination holding the claimant ineligible to receive benefits, effective March 10, 2020 through July 15, 2020, on the basis that the claimant did not comply with reporting requirements, is sustained.

The claimant is denied benefits with respect to the issues decided herein. (Al reclamante se le niegan beneficios con respecto a los temas decididos en el presente.)

JUNE F. O'NEILL, MEMBER